IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2006

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

S.A.NO.290 OF 1995

Rajammal ...Appellant/ Plaintiff

Vs.

1.Lakshmi Ammal(died)
2.Krishnan
3.Venugopal alias Chinnakannan
4.Seenan
5.Raja
6.Raman
7.Lakshmanan
8.kamala
9.Chinnammal
10.Silakka
11.Chennammal
12.Saramdambal
13.Seenan
14.Perumal ..Respondents/ Defendants

(Respondents 6 to 14 are brought on record as the legal representatives of the deceased 1st respondent vide Order of Court dated 17.2.1995 in CMP.NO.1609/1993 (vide order in CMP.16975/92) by KATJ)

The Second appeal filed under Section 100 of CPC is directed against the Judgment and decree dated 16th July 1991 made in A.S.No. 5 of 1990 on the file of the Subordinate Judge, Thirupattur against the judgment and decree dated 30th March 1990 in O.S.No.1808 of 1979 on the file of the Additional District Munsif, Thiruppathur.

For Appellant:Mr..T.M.Hariharan
For Respondents: No appearance

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J U D G M E N T

The second appeal has been filed by the plaintiff against the judgment of the Sub Court, Tiruppatur made in A.S.No.5 of 1990 dated 16.7.1991 confirming the judgment of the trial Court in O.S.No.1808 of 1979 on the file of the Additional District Munsif, Tiruppatur dated 30.3.1990 granting the relief of declaration, but denying the relief of permanent injunction.

2. Despite service of notice, any one of the respondent appeared before this Court and hence the second appeal is taken up for final disposal and after hearing the learned counsel for the appellant and on scrutinizing the materials available on record, the following Judgment is rendered:

3. The plaintiff sought the relief in short stating that the suit properties were purchased under Exs.A1 and A2 sale deeds in the year 1964, that a part of the property was mortgaged with one Kallappa Reddy under EX.A3 and number of acknowledgment for liabilities were made and subsequently the mortgage was discharged. The plaintiff is the owner of the property and she was in continuous possession of the property, that the defendants without any iota of right raised dispute over the title of the plaintiff and tried to interfere with the enjoyment of her possession. Under such circumstances, the plaintiff was compelled to file a suit.

4. The second defendant filed a written statement adopted by other defendants inter alia would submit that the plaintiff and defendants 1 and 2 are the sons of one Pikkie @ Munusamy through the first wife, while defendants 3 to 5 are the sons through the second wife. All the properties were purchased by the said Munusamy out of his own fund, though they were purchased in the name of the plaintiff. Out of 8 acres, 13 cents purchased by the said Munusamy from the family income, the first item of the property is 4 acres 99 cents and the second item of property is 4 acres and out of which 4 acres in Survey No.176/2 was sold and the rest of the properties were actually divided and given to the defendants during the life time of Munusamy, while Munusamy retained the second item of the property for his maintenance. Thus, the property was actually put into division. Apart from that, neither the plaintiff is the owner nor she was in continuous possession of the property. Under such circumstances, she could not sustain the suit either for declaration or for permanent injunction. Hence, the suit was to be dismissed.

5. The trial Court framed the issues, tried the suit and decreed the suit in respect of the relief of declaration and denied

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the relief for permanent injunction. Aggrieved plaintiff took it on appeal and the appeal was also met with the same fate . Hence, the present second appeal by the plaintiff .

6. At the time of admission, the following substantial questions of law were formulated:

1.Whether the first appellate court was correct in reversing the finding of the trial court with regard to possession of the suit property by the defendants?

2. Whether the first appellate Court was correct in not applying the well settled proposition of law that possession follows title especially in the light of the oral and documentary evidence produced by the plaintiff in the absence of any acceptable evidence on the side of the defendants?

` 7. Advancing his arguments on behalf of the appellant, learned counsel for the appellant would submit that in the instant case, both the Courts have held that the plaintiff is the owner of the property by way of purchase and subsequently mortgaged the property and also redeemed the same and thus the plaintiff's title could not be questioned based on the evidence and thus granted the relief of declaration. But, both the Courts have refused to grant the relief of permanent injunction merely relying on Ex.B10 which is Adangal extract for the fasli year from 1379 to 1388 and found that the name of the plaintiff was not shown as she was doing agricultural operation during the relevant period and thus the plaintiff was not in possession of the property either at the time of filing of the suit or thereafter and hence she could not get the relief of permanent injunction and reliance has also been made by both the Courts in Cheventhipaul Nadar Vs. Srinivasa Nadar reported in 1982 2 MLJ 348. The above said decision is not applicable to the facts of this case. It has been applied by both the Courts erroneously and thus in the instant case, the plaintiff is entitled for the relief sought for and from the evidence nothing would go to show that the defendants were in possession of the property. Under such circumstances, the decree for injunction should also have been granted by both the Courts and hence the judgment of both the Courts have got to be set aside and the relief of permanent injunction should be granted by this Court.

8. This Court, after hearing the submissions made by the learned counsel for the appellant and scrutinizing the materials available on record, is convinced that it is a fit case where both the Courts should have granted decree for permanent injunction also. The plaintiff claimed title of the property on the strength of two sale deeds viz. Exs.A1 and A2 on purchase and she has mortgaged the

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property under Ex.A3. She made number of acknowledgments for liabilities and also discharged the mortgage. Sufficient evidence was produced before the Courts below and hence the defendants could not deny the title of the plaintiff . The contention that the properties were put into division and the plaintiff did not have right in the entire property, has to be rejected and on sufficient documentary evidence, the trial Court has granted the relief of declaration and the first appellate Court has also affirmed the same. Both the Courts have denied the relief of permanent injunction stating that the plaintiff was not in possession of the property on the date of the suit. This Court is of the considered opinion that both the Courts have taken an erroneous view. In the instant case, the plaintiff has filed not only sale deeds, but also kist receipts which are marked as Ex.A10 to Ex.A25 for the year 1965 to 1988 and the suit was filed on 19.12.1979. At this juncture, it is pertinent to point out that both the Courts have placed much reliance on Ex.B10 Adangal extract for the fasli year 1379 to 1388 and found that the name of the plaintiff is not shown as she was doing agricultural operation during the relevant period. It is also pertinent to point out that nowhere the names of the defendants also found in Ex.B.10 and thus the defendants have not brought forth any material before the lower court that they were in possession of the property either before the filing of the suit or at the time of the suit.

Both the Courts have applied the decision of this Court in Cheventhipaul Nadar's case. This Court is of the considered opinion that the decision is not applicable to the facts of the present case. It was the case where number of item of properties were actually found in the name of the 6th defendant and sufficient evidence was also produced for the same. In the above said case, the plaintiff has not proved the ownership of the property and since the 6th defendant was in possession of the property at the time of filing of the suit and the same was proved by producing sufficient evidence, the plaintiff could not get the relief of permanent injunction. But, in the instant case, it has got to be distinguished that the plaintiff following the purchase has paid the kist and filed the documents in support of the same and apart from that in Ex.B10, though the name of the plaintiff is not found, nowhere the names of the defendants is also recorded. There is no material available on record to the effect that the defendants are in possession of the property. Under such circumstances, this Court is of the considered opinion that once both the Courts have granted the relief of declaration that the plaintiff is the owner of the property and as per the document, she was in possession of the property from the time of purchase and no material is placed to show that the plaintiff was dispossessed at any point of time and the defendants were not also not in possession of the property, it is a fit and proper case that permanent injunction should be

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granted to the plaintiff. The Judgment of both the Courts in respect of denial of permanent injunction is set aside and the said relief is granted.

9. The Second appeal is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

VJY

To

1.The Subordinatre Judge, Thirupattur
2. The Additional District Munsif, Thiruppathur
3. The Record Keeper, VR Section, High Court, Madras.

1 cc to Mr.T.M.Hariharan , Advocate, Sr. 61942

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